IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **FAO (OS) No.116/2006**

% Date of Decision: 24th September, 2007

\# DELHI DEVELOPMENT AUTHORITY ..... Appellant
! Through: Mr.D.S.Mehandru, Advocate

versus

$ M/S MOHAN CONST. (P) LTD ..... Respondent
^ Through: Mr.Sunil K. Mittal, Advocate
with Ms.Sonika Yadav &
Ms.Bharti Grover, Advocate.

CORAM:
* **HON'BLE MR.JUSTICE T.S.THAKUR**
* **HON'BLE MS. JUSTICE VEENA BIRBAL**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

T.S.THAKUR, J. (ORAL)

CM No.3733/2006

There is a delay of 120 days in the filing of this

appeal. The appellant has moved the present application for condonation of the same. The respondent has not chosen to file any objections to the application although it was argued on his behalf by the learned counsel that the averments made in the application do not make out a case for condonation. We do not think so. A reading of the application which is accompanied by an affidavit shows that although the order passed by the learned Single Judge was pronounced on 12th September, 2005, a copy of the same was received in the office of the appellant only on 29th September, 2005. The matter thereafter appears to have been placed before the Arbitration Board of the appellant authority who discussed the issue and resolved on 30th December, 2005 to file an appeal against the award of the arbitrator insofar as the same related to claims No.8 & 9. The present appeal filed thereafter on 7th February, 2006 was however delayed by 120 days. This delay, it is evident, is primarily on account of the time taken by the appellant in processing the papers for taking a decision in the matter and for completing the necessary formalities for

presentation of the appeal. In the circumstances, therefore, we are inclined to condone the delay but subject to cost of Rs.5,000/- to be deposited with Delhi High Court Advocates Welfare Fund. The application is accordingly allowed and delay condoned subject to the above condition.

CM No.3733/2006 is disposed of.

FAO (OS) 116/2006

Admit.

2. The appeal has been heard for final disposal with consent.

3. The parties entered into a contract for construction of 120 LIG and 204MIG Flats in Block-A, Pocket N, Shalimar Bagh, New Delhi. The agreement executed between the parties envisaged adjudication of disputes by a sole arbitrator. Disputes having arisen between the parties, the same were referred to the sole arbitration of Sh.K.D.Bali who made an award dated 3.8.1989. Aggrieved by the award of a sum of Rs.10,00,000 under claims No.8 and 9 and interest @ 12% per annum awarded on the amount held payable to the claimant, the appellant filed objections which were heard and eventually disposed of by

a Single bench of this Court in terms of his order dated 12th September, 2005. The objections raised by the appellant related primarily to the award of Rs.10 Lacs towards damages for the prolongation of the work period for reasons attributable entirely to the appellant and on account of infructuous expenditure incurred by the claimant on the maintenance of establishment tools and plant over the extended period. Relying upon a decision of a Division Bench of this Court in *DDA v. Bhagat Construction Co. Pvt. Ltd*. 2004 (3) Arbitration Law Reporter 481, the learned Single Judge held that since the arbitrator had relied upon the available material including the Hindrance Register maintained by the respondent during the progress of the work and recorded a finding that the respondent, appellant herein, had committed several breaches of the contract between the parties, there was no room for interference with the award. The court also held that the arbitrator was not required to disclose the mathematical calculation underlying the amount awarded by him so long as the award made by him

demonstrated application of mind. Having said so, the court set aside the award made by the arbitrator insofar as the sum of Rs.50,000/- awarded towards infructuous expenditure was concerned keeping in view the finding recorded by the arbitrator that the claimant had not produced any evidence in support of that claim. The award was with that modification made a rule of the court with the direction that the claimant would be entitled to interest @ 9% per annum on the principal amount of the award from the date of the decree till realisation excluding interest @ 12% per annum awarded by the arbitrator for the pre-decreetal amount. The present appeal assails the correctness of the said award.

4. We have heard learned counsel for the parties at considerable length and perused the record. As rightly pointed out by the learned Single Judge, a court dealing with objections under Section 30/33 of the Arbitration Act, 1940 does not sit in appeal over the award made by the arbitrator. So long as the arbitrator has applied his mind, noticed the contentions urged on both the sides and looked

into the material assembled by them in support of their respective versions, the court would respect the view taken by the arbitrator unless there is some patent illegality, perversity or irrationality in the same. The court may also interfere in cases where the award made by the arbitrator goes beyond the terms of the reference made to him. There is no such illegality, perversity or lack of jurisdiction in the present case. The arbitrator has applied his mind to the contentions of both the parties and appreciated the material available on record in relation to the said versions and recorded a clear finding of fact that there was delay in the completion of the work on account of reasons attributable to the appellant. The arbitrator has also held that if the price index was to be made the basis for the award of compensation for the extended period of contract, the amount due to the claimant would work out to Rs.31,95,700/-. Keeping in view, however, the fact that a part of the delay that had occurred in the completion of the contract was also attributable to the claimant, the arbitrator has reduced the said amount and awarded only a

sum of Rs.10 lacs in favour of the claimant. It is true that the arbitrator has not disclosed the basis on which the said amount has been determined by him but having regard to the settled legal position that it is not necessary for the arbitrator to disclose the working of his mind while determining the amount actually awarded by him, the absence of any such calculation in the award would not render the same illegal. The arbitrator, it is common ground, was an expert engineer member of the DDA. His experience in matters relevant to the controversy between the parties would therefore have a bearing on the determination of the issues arising before him. Inasmuch as the arbitrator awarded a lumpsum amount under claim No.8, he did not commit any illegality or perversity of the kind that could justify interference from this Court. There is no merit in this appeal which fails and is hereby dismissed but without any orders as to costs.

T.S.THAKUR, J

VEENA BIRBAL, J

SEPTEMBER 24, 2007
srb